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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,846	12/08/2003	Frederic Simonet	06028.0037-00	9233

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/728,846

Applicant(s)

SIMONET ET AL.

Examiner

Eisa B. Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 31, 35, 44, 45, 48-66 and 71-89 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 31, 32, 44, 45, 50-66 and 71-89 is/are rejected.
- 7) ☒ Claim(s) 33-35, 48 and 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/3/2007 has been entered.

Claim Rejections - 35 USC § 102

2 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-19, 31-32, 44-45, 50-66 and 71-89 are rejected under 35 U.S.C. 102(b) as being anticipated by Cottard et al. (US 2001/0023514 A1).

Cottard et al. (US' 514 A1) teaches a composition for oxidation dyeing of hair comprising oxidation bases chosen from para-phenylenediamines of a formula (I) as claimed in claims 1-3 and 50-54 (see page 6, formula I), double bases of a formula (II) as claimed in claim 55 (see page 6, formula II), para-aminophenols of a formula (III) as claimed in claims 56-57 (see page 7, formula III), heterocyclic bases as claimed in claim 58 (see page 7, paragraph, 0140), wherein the oxidation bases are presented in the claimed amounts as claimed in claims 59-60 (see page 8, paragraph, 0160), associative cationic polymers of quaternized celluloses modified with groups comprising at least one associative cationic polymer as claimed in claims 31-32 (see page 5, paragraphs, 0097-0104), wherein the associative cationic polymer is presented in the

Art Unit: 1751

amounts of 0.01 to 10% and 0.1 to 5% as claimed in claims 44-45 (see page 5, paragraph, 0108), cellulose thickeners (nonionic cellulose-based compounds) chosen from hydroxyethylcellulose and hydroxypropylcellulose in the claimed amounts as claimed in claims 1 and 4-7 (see page 17, paragraphs, 0340 and 0341), cationic polymers of dimethyldiallyammonium chloride homopolymers in the claimed amounts as claimed in claims 1 and 8-12 (see page 10, paragraph, 0206 and page 12, formulae (W) and (U) and paragraph, 0245), at least one thickening polymers chosen from anionic, nonionic and cationic comprising at least one hydrophilic unit and at least one fatty chain ally ether unit as claimed in claims 13-19 (see page 2, paragraphs, 0040-0045), couplers chosen from meta-phenylenediamines presented in the claimed amounts as claimed in claims 61-63 (see page 8, paragraphs, 0162 and 0163), acid addition salts of chosen from hydrochlorides and hydrobromides as claimed in claims 64-65 (see page 8, paragraph, 0164), direct dyes as claimed in claim 66 (see page 8, paragraph, 0164), surfactants in the amounts of 0.01 to 40% as claimed in claims 71-74 (see page 16, paragraph, 0323 and page 17, paragraph, 0339), guar gum thickeners in the amounts of 0.01 to 10% as claimed in claims 75-77 (see page 17, paragraphs, 0340 and 0341), reducing agent in the amounts of 0.05 to 1.5 % as claimed in claim 78 (see page 17, paragraph, 0346), wherein the composition also comprises hydrogen peroxide in the amount of 1 to 40 volumes as an oxidizing agent as claimed in claims 79-82 (see page 17, paragraph, 0349), wherein the composition has a pH in the range of 6-11 as claimed in claim 83 (see page 18, paragraph, 0351). Cottard et al. (US' 514 A1) also teaches a process for oxidation dyeing of keratin fibers and a multi-compartment device comprising the dyeing composition as described above and as claimed in claims 84-89 (see page 23, claims 72-86).

Art Unit: 1751

Cottard et al. (US' 514 A1) teaches all the limitations of the instant claims. Hence, Cottard et al. (US' 514 A1) anticipates the claims.

Allowable Subject Matter

3 Claims 33-35 and 48-49 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Based on the provided Declaration filed on February 1, 2007

Response to Applicant's Arguments

4 Applicant's arguments filed on 2/1/2007 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-19, 31-32, 44-45, 50-66 and 77-89 under 35 U.S.C. 102(b) as being anticipated by Cottard et al. (US' 514 A1), Applicant argues that Cottard fails to teach a composition comprising at least one cationic associative polymers and nonionic cellulose-base compound not comprising a fatty chain as claimed. Applicant also argues that the eight-page passage of Cottard et al. cannot be said to teach the claimed composition. Applicant further argues that the Example of Cottard et al. does not teach a composition as claimed.

The examiner respectfully disagrees with the above arguments because a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegeaal Bros. v. Union Oil Co. of California*, 824 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claims is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). In this

Art Unit: 1751

case Cottard et al. (US' 514 A1) clearly teaches a composition comprising a) oxidation bases (see page 6, formula I), b) cationic associative polymers of quaternized cellulose modified by groups comprising at least one fatty chain (see page 5, paragraph, 0101), c) cellulose base compounds not comprising fatty chain such as hydroxyethylcellulose and hydroxypropylcellulose (see page 17, paragraphs, 0340 and 0341) and d) cationic polymers such as dimethyldiallylammonium chloride (see page 10 paragraph, 0206). Therefore, the rejection under 102(b) is proper and maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/728,846

Art Unit: 1751

Page 6

A handwritten signature in black ink, appearing to read "Eisa Elhilo". The signature is stylized with a large, looped "E" and a cursive "Elhilo".

Eisa Elhilo
Primary Examiner
Art Unit 1751

February 12, 2007